

CHAPTER 2. FAA AND FLIGHT STANDARDS HISTORY AND THE PUBLIC LAW

SECTION 1. HISTORY OF THE FEDERAL AVIATION ADMINISTRATION

1. EARLY REGULATORY AUTHORITY AND RESPONSIBILITIES.

A. Air Commerce Act of 1926. Aviation regulatory authority in the United States began with the enactment of the Air Commerce Act of 1926. This legislation was passed in response to requests from the aviation industry, which believed commercial use of the airplane could not reach its full potential without Federal safety regulation. The Air Commerce Act commissioned the Secretary of Commerce to foster air commerce, issue and enforce air traffic rules, certify pilots and aircraft, establish airways, and operate and maintain air navigation aids. During the next decade, the Department of Commerce continued to fulfill its civil aviation responsibilities specified by the Air Commerce Act. A major responsibility was added in 1936 when the Department of Commerce assumed the task of controlling enroute air traffic.

B. Civil Aeronautics Act of 1938. The Civil Aeronautics Act was passed in 1938. This act established a new, independent agency known as the Civil Aeronautics Authority (CAA) which was given additional power to issue air carrier route certificates and regulate airline fares. In 1940, President Franklin Roosevelt divided the CAA into the Civil Aeronautics Board (CAB) and the Civil Aeronautics Administration (CAA). The CAB was established as an independent agency. It was given authority and responsibility for economic and safety rulemaking and accident investigation. The CAA was reassigned to the Department of Commerce. It was given responsibility for air traffic control, airman and aircraft certification, safety enforcement, and airway development. In 1946, Congress added a federal-aid airport program to the responsibilities of the CAA.

C. Federal Aviation Act of 1958. In the 13 years following World War II, air commerce, aviation technology, and the public demand for air services reached unforeseen levels of complexity. Under the Department of Commerce, the CAA could not efficiently fulfill its responsibilities or solve many of the difficulties caused by this rapid growth and increasing

complexity. Congress passed the Federal Aviation Act of 1958 (FA Act). This law created an independent agency, the Federal Aviation Agency (FAA). It gave the FAA the sole responsibility for developing and maintaining a common civil/military system of air navigation and air traffic control along with the former responsibilities of the CAA and the safety rule-making functions of the CAB.

D. Department of Transportation. In 1967 the Federal Aviation Agency was placed in the newly created Department of Transportation (DOT) and renamed the Federal Aviation Administration (FAA). This action was based on the beliefs of Congress, the executive branch, and the transportation industry that integrated and balanced transportation systems were necessary for the nation's transportation needs and that such systems could best be managed by a single department. The FAA acquired additional responsibilities through amendments to the FA Act. Examples of these added responsibilities are aviation security, aircraft noise abatement, and airport certification. The Airport and Airway Development Act authorized the FAA Administrator to establish minimum safety standards for airports and to issue operating certificates to air carrier airports meeting those standards.

3. EARLY ORGANIZATION OF THE FAA. In 1927, the Department of Commerce employed 234 persons working in the Air Regulations Division and the Air Information Division. When the CAA was created, it was administered by five appointed officials with authority to regulate civil aviation. Its associated agency, the Air Safety Board, was responsible for investigating accidents, determining probable cause of each accident, and making recommendations for accident prevention. From 1938 through 1958, the number of CAA employees grew from 2,938 to 25,805. As of 1958, six domestic regions, one international region, the Aeronautical Center, and a Technical Development and Evaluation Center (FAA Technical Center) were directly responsible to the CAA Administrator. Within CAA headquarters a major operational office was directed by the Assistant Administrator for Operations. A subordinate office to the Assistant Administrator for

Operations was called the Office of Aviation Safety. The Office of Aviation Safety was the predecessor of the Bureau of Flight Standards. Other subordinate offices to the Assistant Administrator for Operations were the Office of Federal Airways, the Office of Airports, and Washington National Airport. In 1959, the first year of the independent FAA, the FAA's Washington headquarters organization formed the FAA's regional organizational structure included six domestic regions, one international region, and the Aeronautical Center.

A. New Organizational Structure. In 1994, a new organizational structure for the FAA was established to make it more efficient, effective, and businesslike and to make better use of resources. The new structure now includes five Assistant Administrators, the Chief Counsel, and six Associate Administrators. The offices of the Assistant Administrator for System Safety and Associate Administrator for Research and Acquisitions were established. Roles and responsibilities in other areas were realigned. Offices were established and reorganized along functional lines. The Air Traffic Services organization was established and consists of Air Traffic, Airways Facilities, the Office of System Capacity, and the Office of Independent Operational Test and Evaluation. This established a single point of accountability for operations, maintenance, and management of the National Airspace System to enhance customer service and improve safety performance. Airports and Civil Aviation Security Organizations were refined. The Airports organization focuses on the joint goals of airport development and system capacity. Security addresses domestic and international security issues.

B. Administrative Functions. In the 1994 reorganization, the administrative functions of the agency were centralized under a new Administration organization which included budget, accounting, human resources, training, the Regional Administrators, the Aeronautical Center, and related support functions. This made the FAA more effective in dealing with streamlining, funding, and personnel issues. A senior executive level Deputy Assistant Administrator in the Office of Civil Rights was established to serve as an advocate for diversity and to ensure that accomplishing diversity goals remained paramount. The Offices of Chief Counsel; Policy, Planning, and International Aviation; Government and Industry Affairs; and Public Affairs remained unchanged.

5. EVOLUTION OF FLIGHT STANDARDS.

When the FAA was created in 1958, the Bureau of Flight Standards was established as one of the five operating bureaus within the FAA. This bureau

included most safety functions of the earlier Aeronautics Branch of the Department of Commerce and its successors, such as the Flight Operations Service and the Office of Flight Operations and Airworthiness. In 1967, the name of the Bureau of Flight Standards was changed to Flight Standards Service. The director of this service reported directly to the FAA Administrator. The Flight Standards Service was later assigned as one of several offices within the Office of Associate Administrator for Aviation Standards which was established in January 1979. In July of 1979, three new offices, Flight Operations, Airworthiness, and Aviation Safety, absorbed the safety functions previously assigned to the Flight Standards Service. Most headquarters flight standards functions were performed by the Office of Flight Operations and the Maintenance Division of the Office of Airworthiness. In November 1984, the Office of Aviation Safety was reassigned as a staff office reporting directly to the Office of the Administrator. In 1988, the Office of Flight Standards was created at FAA headquarters by combining the Office of Flight Operations and the Maintenance Division from the Office of Airworthiness. With this change, Flight Standards safety responsibilities were aligned at the headquarters, regional, and district office levels. The Office of Flight Standards became the Flight Standards Service.

A. Headquarters Organizations. The Flight Standards Service is one of five organizations reporting to the Associate Administrator for Regulation and Certification. The Flight Standards Service consists of seven divisions which report to the Director of Flight Standards. The seven divisions are the Air Transportation Division (AFS-200), the Aircraft Maintenance Division (AFS-300), the Technical Programs Division (AFS-400), the Flight Standards National Field Office (AFS-500), the Regulatory Support Division (AFS-600), the Civil Aviation Registry (AFS-700), and the General Aviation and Commercial Division (AFS-800).

B. Regional Organization. Regional offices are organized into operating divisions similar to Washington headquarters. Regional Flight Standards divisions and Flight Standards District Offices (FSDO) are responsible for accomplishing special regional programs as well as the national policies and programs developed by the Flight Standards Service. FSDO's report to the jurisdictional Flight Standards regional division manager. Regional Flight Standards division managers report directly to the Director of the Flight Standards Service.

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SECTION 2. PUBLIC LAW AND RESPONSIBILITY FOR PUBLIC SAFETY

1. PUBLIC LAW. Section 8, Article 1 of the United States Constitution, gives Congress the power to regulate and control interstate commerce.

A. Air Commerce Act. The Air Commerce Act of 1926 empowered the Secretary of Commerce to establish the necessary regulatory system to control and regulate air commerce. The regulatory system which was initially established evolved into an organized system of Civil Aviation Regulations (CAR). The CAR were supplemented by appropriately numbered Civil Aviation Manuals (CAM) which contained policies, procedures, and interpretations of each CAR section. The CAR and CAM became outmoded with the rapid growth of air transportation and the introduction of turbojet transport category airplanes in the 1950's. Recodification of the CAR began in 1961 and was completed in 1964 with the adoption of the Federal Aviation Regulations.

B. Federal Aviation Act. The Federal Aviation Act (FA Act) was signed into law on August 23, 1958. This public law created the FAA and empowered it to promote safety of flight in air commerce by prescribing safety standards. It gave regulatory authority of aviation functions to two independent agencies: the FAA and the Civil Aeronautics Board (CAB). The CAB retained the responsibility for economic regulation of air carriers and investigation of aircraft accidents. The FAA was given five basic responsibilities. The declaration of aviation policy in section 103 of Title I, General Provisions, summarized these responsibilities. The FAA's regulatory authority to prescribe, revise, and enforce standards was outlined in Title VI, Safety Regulation of Civil Aeronautics. Title VI is the foundation for the present structure of Flight Standards and delineates surveillance and enforcement responsibilities. The sections of Title VI are briefly described as follows:

- Section 601, General Safety Powers and Duties
- Section 602, Airman Certificates
- Section 603, Aircraft Certificates
- Section 604, Air Carrier Operating Certificates
- Section 605, Maintenance of Equipment in Air Transportation
- Section 606, Air Navigation Facility Rating
- Section 607, Air Agency Rating
- Section 608, Forms of Applications

- Section 609, Amendment, Suspension, and Revocation of Certificates
- Section 610, Prohibitions
- Section 611, Control and Abatement of Aircraft Noise and Sonic Boom
- Section 612, Airport Operating Certificates

3. CREATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD. The National Transportation Safety Board (NTSB) was established by the Department of Transportation Act. The NTSB was made a part of the Department of Transportation (DOT) on April 1, 1967. The NTSB was given the CAB functions, powers, and duties concerning aviation accident investigations, findings, and formulation of aviation safety improvement recommendations. On April 1, 1975, the NTSB was made an independent agency. This independence allowed the NTSB to properly fulfill its responsibilities to form conclusions and make recommendations which may be critical of the DOT/FAA or its officials. FAA personnel participate in aviation accident investigations conducted by the NTSB. However, FAA representatives are not permitted to participate in determining the "probable cause" of any aviation accident investigated by the NTSB. At the request of the NTSB, certain aviation accidents are investigated by the FAA. The facts, conditions, and circumstances of these accidents are reported to the NTSB which then determines "probable cause."

5. THE AIRLINE DEREGULATION ACT. The Airline Deregulation Act (ADA) was enacted on October 24, 1978. This Act expressed the intention of Congress to diminish the functions of the Federal Government in regulating airline economics. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984. On January 1, 1985, remaining CAB functions were transferred to the Office of the Secretary of Transportation (OST). Included in these remaining functions is the requirement that air carriers be found fit, willing, and able to perform as air carriers. These air carriers must hold economic certificates or an exemption under the FA Act in order to provide air transportation to the public.

7. PUBLIC LAW 103-272. Public Law 103-272, enacted July 5, 1994, repealed the FA Act of 1958, except for § 613. It did not have substantive effect on the provisions of the FA Act of 1958; however, provi-

sions formerly in the FA Act were placed in Title 49 of the United States Code (49 U.S.C.), Subtitle VII, Aviation Programs. The recodification of 49 U.S.C. resulted in new section numbers and rearrangement of many of the statutory provisions.

9. PUBLIC LAW 104-264. Public Law 104-264, the Reauthorization Act of 1996, enacted October 10, 1996, eliminated the FAA's mandate to "promote" aviation.

11. THE PRIVATE SECTOR RESPONSIBILITIES. The term "private sector," when applied to aviation, includes all individuals and organizations participating in air commerce. Individuals and organizations such as pilots, mechanics, air carriers, air operators, air agencies, and manufacturers participate directly in air commerce while other individuals and organizations such as vendors, food caterers, travel agents, baggage handlers, and aircraft sales participate indirectly. The FAA, which represents part of the "public sector," has the duty, as authorized by 49 U.S.C., subtitle VII, § 40101, to establish minimum standards, rules, and national policy which provide adequately for national security and safety in air commerce. This responsibility for aviation safety, however, does not rest entirely with the FAA. Persons or organizations of the "private sector" also have an obligation to provide for public safety. All airmen, air carriers, aircraft owners and operators, air agencies, and certain airport operators who qualify for and accept an FAA certificate assume these "private sector" responsibilities. A major part of air commerce is conducted by private persons or organizations engaged in air transportation. These persons or organizations are referred to as air carriers and are involved in the common carriage by aircraft of persons, property, or mail for compensation or hire. A classification of safety standards appropriate to the differences between air transportation and other forms of air commerce is required by 49 U.S.C. Therefore, safety standards applicable to air transportation (air carriers) are more stringent than standards applicable to persons or organizations not involved in common carriage.

13. AIR OPERATOR RESPONSIBILITIES FOR PUBLIC SAFETY.

A. Consideration of Safety and the Public Interest. In part, 49 U.S.C. § 44701 specifies that, when prescribing standards and regulations and in issuing certificates, the FAA shall give full consideration "to the duty resting upon air operators to perform their services with the highest possible degree of safety in the public interest . . ." In other words, 49 U.S.C. charges the FAA with the responsibility of promulgating and enforcing adequate standards and regulations. At the same time, 49 U.S.C. recognizes that

holders of air operator certificates have a direct responsibility of providing air transportation with the highest possible degree of safety. The meaning of 49 U.S.C. § 44701 should be clearly understood. It means that this duty (or responsibility) rests directly with the air operator, irrespective of any action taken or not taken by an individual FAA Inspector or the FAA.

B. Complying with 49 U.S.C., Subtitle VII. Before certification, the FAA's objective is to make a factual and legal determination that a prospective certificate holder is willing and able to fulfill its duties as set forth by 49 U.S.C. and comply with minimum standards and regulations prescribed by the FAA. This objective continues to exist after certification. If a certificate holder fails to perform its services with the highest degree of safety or fails to comply with the minimum standards and regulations, 49 U.S.C. §§ 44709 and 1153 specify that the certificate may be amended, modified, suspended, or revoked in whole or in part. Additionally, 49 U.S.C. §§ 44713 generally provides that whenever an inspector, in the performance of a duty, finds that any aircraft, aircraft engine, propeller, or appliance, used or intended to be used by any air operator in air transportation, is not in condition for safe operation, the inspector shall notify the operator and the product shall not be used in air transportation unless the FAA subsequently finds it to be in a condition for safe operations.

C. Noncompliance. The following are conditions and/or situations which could indicate that an air operator is unable and/or unwilling to carry out its duties as set forth by 49 U.S.C.

(1) Repetitive noncompliance with the minimum standards and regulations is indicative that the air operator is incapable or unwilling to perform services with the highest possible degree of safety. Air operators must demonstrate the ability to consistently comply with the minimum standards and regulations without constant FAA surveillance. Circumstances which indicate a need for constant surveillance of all operations of an air operator may provide sufficient reasons and evidence to invoke the provisions of 49 U.S.C. §§ 44709 and 1153 to suspend or revoke the certificate or to amend the operating authority specified in operations specifications.

(2) Inadequate knowledge of minimum standards, regulations, or safe operating practices displayed by air operator management personnel may indicate a lack of concern for the duty of the air operator as recognized in 49 U.S.C. A lack of knowledge and/or understanding of minimum standards and safe practices displayed by an air operator's employees is evidence that the air operator is not providing suffi-

cient training and guidance required by current regulations and, consequently, not fulfilling its duties.

(3) Current regulations specify the certificate holder is responsible for operational control and airworthiness of its aircraft. Control and discipline of an air operator's employees and agents are essential factors in fulfilling these responsibilities. The inability or lack of motivation to exercise such operational and/or quality airworthiness control clearly indicates that an air operator cannot or will not fulfill its duty.

(4) Accurate recordkeeping is a key factor in assuring positive operational and quality airworthiness

control. It is the only method currently recognized of demonstrating that such control has been exercised. Accurate recordkeeping is also the only known method for an air operator to show continuing compliance with the minimum standards and regulations. Usually, compliance can only be substantiated by records and should never be presumed. Inaccurate and/or incomplete records should not be condoned. Knowing and willful falsification or alteration of records is a misdemeanor under 49 U.S.C. § 46310 and should be promptly prosecuted in accordance with the appropriate provisions of the applicable statutes and regulations.

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SECTION 3. REGULATORY RESPONSIBILITY

1. GENERAL.

A. Authority. The FAA is one of the regulatory agencies within the executive branch of the federal government that carry out the will of Congress, expressed in public law and considered to be in the public interest. In fulfilling the FAA's regulatory responsibility, the FAA Administrator must take into consideration the following items as being in the public interest:

- Regulation of air commerce in such a manner that it promotes its development and safety and fulfills the requirements of national defense
- Encouragement and development of civil authorities
- Controlled use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both
- Consolidation of research and development with respect to air navigation facilities, as well as the installation and operation of these facilities
- Development and operation of a common system of air traffic control and navigation for both military and civil aircraft

B. The Regulatory Process. It is within these broad public considerations that the FAA Administrator regulates air commerce. The regulatory process is interactive and its speed is regulated by the need to involve the public in the process and the need to coordinate with the DOT and the Office of Management and Budget (OMB). Only in an emergency may the normal regulatory process be accelerated.

3. REGULATORY PROCEDURES. General rulemaking procedures followed by the FAA are explained in Title 14 of the Code of Federal Regulations (14 CFR) part 11. The procedures require establishment of a public docket, which is maintained as an official FAA record of each rulemaking action. Certain rulemaking responsibilities have been delegated to FAA regional directors. For example, responsibility for processing aircraft and engine regulatory proposals and final rules are delegated to certification directorates. However, the Administrator is the final authority with respect to all aviation safety rulemaking actions.

5. FAA RESPONSIBILITIES. To fulfill the FAA's regulatory responsibility, the Administrator gives full consideration to the obligation of air operators and air agencies to perform their services with the highest degree of safety in the public interest. The Administrator also considers any differences between air transportation and air commerce. Safety standards, rules, regulations, and certificates are prescribed and revised continuously in recognition of those differences.

7. PUBLIC RESPONSIBILITIES AND RIGHTS. Any interested person may petition the Administrator to issue, amend, exempt, or rescind a regulatory requirement. Petitions for rulemaking may also be initiated from within FAA. All petitions must be specific as to scope and purpose and must contain any information, views, and arguments which support the requested regulatory action. A summary of each public petition is published in the Federal Register to allow for public comment. Normally, the public has 60 days to submit comments on petitions for rulemaking and 20 days to submit comments on petitions for exemption. After the close of the public comment period, the FAA considers all comments received and decides whether to accept or deny the petition. If the decision is to deny, a denial of petition is prepared, coordinated, signed, and mailed to the petitioner. If accepted, the rulemaking proceeds until a final rule is issued. In addition, the final FAA action on each petition is published in the Federal Register.

9. PETITIONS FOR RULEMAKING. If the FAA decides to accept the petition for rulemaking, a Notice of Proposed Rulemaking (NPRM) is prepared by the appropriate FAA office. The NPRM is published in the Federal Register for public comment. If considered appropriate by the FAA, a public hearing may also be held. The public comment period may vary based on the complexity and significance of the proposed regulatory action. After the close of the public comment period, the FAA considers all comments received and decides whether to proceed with a final rule or to withdraw the NPRM. In either case, the decision is prepared, coordinated, signed, and published in the Federal Register. Generally, a final rule is effective 30 days after publication in the Federal Register. (See 14 CFR part 11 for complete information regarding the rulemaking process.)

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